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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re ALBERT J., JR., et al., Persons
Coming Under the Juvenile Court Law.

B218987
(Los Angeles County
Super. Ct. No. CK43716)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

VERNA W.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Marilyn H. Mackel, Juvenile Court Referee. Affirmed.

Niccol Kording, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

Verna W. (Mother) challenges a court order establishing dependency jurisdiction and giving the county custody of her son. We conclude that (1) Mother forfeited her challenge to the custody order because she did not object to it below; (2) the court sustained allegations against the children's fathers, thereby establishing dependency jurisdiction; (3) Mother voluntarily submitted to jurisdiction; and (4) the court's findings are supported by substantial evidence. Accordingly, we affirm the judgment.

FACTS

Mother has a long history with the Department of Children and Family Services (DCFS), which has received over 20 referrals regarding Mother's family. The referrals alleged repeated sexual, physical and emotional abuse of Mother's children, along with Mother's neglect and incapacity. Some of the allegations were substantiated, others were unfounded or inconclusive. DCFS instituted six "Voluntary Family Maintenance" programs for Mother's family, starting in 1991.

At the time of the petition in the present case, Mother's household consisted of a developmentally disabled adult daughter; two sons aged 14 and 17 (who are not the subjects of this proceeding); a 12-year-old son named Albert; and a four-year-old daughter, A.W. The whereabouts of A.W.'s father are unknown. Albert's father is serving a prison term of 15 years to life for forcibly raping Mother's disabled daughter, starting when she was 10 years old.

In March 2009, the family came to the attention of DCFS when A.W. revealed that she was sexually molested by her half-brother Albert. A.W. told Mother that Albert "made her 'kiss his private parts' and that he also 'kissed her private parts.'" During a sexual abuse examination, A.W. told the nurse practitioner that she kissed Albert's "'private'" five times, and "'[h]e kissed my private.'" A.W. told investigating police officers that she "kissed" Albert's genitals "and demonstrated how he held her by her head and made her head go up and down." A.W. made similar statements about kissing Albert's genitals, and gave a demonstration of pushing her head up and down when she was interviewed by the DCFS caseworker.

When Mother confronted Albert, he denied wrongdoing and ran away from home. Albert was later arrested and taken to juvenile hall, where he was detained until April 23, 2009. In an interview with DCFS, he denied touching A.W.'s private parts. Albert has been in psychotherapy since 2005: he is being treated for depression as he has emotional instability and thoughts of self harm. On several occasions in the past, Albert expressed concerns to Mother that he might "turn out like his father," who is incarcerated for raping Albert's older half-sister. Albert's teachers report that he is acting out in class, calling classmates offensive names, and refused to stop touching other students.

In its detention report, DCFS noted that the children living in Mother's household feel that she takes good care of them, and Mother denied allegations of neglect. However, the family has a long history of sexual abuse: four of Mother's children, including A.W. and Albert, have been molested. As a result, DCFS categorized the family as "High Risk for future abuse," and asked the court to place Albert in foster care while leaving the other children with Mother.

A probation department report in Albert's delinquency case states that Albert "poses a risk to the family at this time, [and] therefore until deemed appropriate, he should remain out of the home until such time as he and the family can receive sexual abuse counseling and the situation has been reassessed." The probation department deferred to DCFS's plan to "ensure the safety of [Albert], the victim, and the community," which includes enrolling Albert in counseling and placing him outside of parental care. Albert "would be the most benefited if he was jointly supervised by both DCFS and the probation department."

On June 17, 2009, DCFS filed a petition in dependency court. The court found a prima facie case for detaining Albert, finding that it would be contrary to his welfare to remain in parental custody. Albert was placed in foster care and A.W. remained with Mother. The court ordered reunification services. Mother was to have parenting and sexual abuse classes for nonoffenders, and individual and conjoint counseling with the children. Albert was ordered to have individual counseling with a therapist experienced in sexual abuse cases. Albert's visits with Mother and his siblings were to be monitored.

For its jurisdiction report, DCFS re-interviewed the children. Albert initially denied that he ever kissed A.W.'s privates or made her kiss his. A few weeks later, Albert telephoned the DCFS investigator and stated that he wanted to come clean: he admitted that he kissed and touched his sister's privates and made her put her mouth on his penis. Albert acknowledged that his father raped his older sister and is now in jail for a long time. Albert said, "I blamed my mother for my father going to jail. I told her that I was going to make her life a living hell. I apologized later after saying that to her." In her interview, A.W. reiterated that she and Albert kissed each other's privates, saying, "I told him to stop but he wouldn't." Albert "continues to exhibit defiant behaviors" and had to be placed in a group home after running away from his foster placements and refusing to return. Mother agrees that Albert "needs help." Albert said that he did not want to return to Mother's custody.

The jurisdiction hearing was conducted on September 9, 2009. Albert's father waived his right to attend the hearing, and Mother did not appear. Mother's attorney asked the court to strike the allegations against Mother, who acted appropriately and contacted the family therapist and DCFS once she learned that Albert had molested A.W. Mother instituted therapy in 2005 to help the family cope with previous sexual abuse. She did not realize that Albert was sexually abusing A.W., and according to Albert, Mother set up house rules that no male family member was to be in a bedroom with or alone with a younger female. Albert concededly has psychological problems, but Mother took steps to address them and there were no warning signs before the molestation occurred. Finally, Mother's attorney stated that "Mother is willing to voluntarily submit to the [court's] jurisdiction and participate in any services that the court deems necessary."

The court noted that Mother was not at home when Albert molested A.W., and "it is that absence from the home that is of concern to the court." The court stated, "perhaps this wouldn't have occurred" if Mother were home. Although the court indicated that the lack of constant supervision was probably not "jurisdictional," it was of sufficient concern. What is jurisdictional was Mother's inability to protect A.W.

The court sustained the following allegations: (1) Albert engaged in sexually inappropriate conduct with A.W.: this conduct “demonstrates the mother’s inability to protect the children, and endangers the children’s physical and emotional health and safety, placing them at risk of physical and emotional harm”; (2) Albert’s father is incarcerated for forcible lewd and lascivious acts with a child under 14, and his sexual abuse of the children’s sibling endangers the children’s health and safety; and (3) A.W.’s father has failed to provide the child with the necessities of life and his whereabouts are unknown, which endangers her physical and emotional health and safety. Albert and A.W. were declared dependents of the court. The court found that returning Albert to parental custody poses substantial risk and detriment, so he was placed in the custody of DCFS. A.W. remained in Mother’s custody. Family reunification services were ordered that include counseling and monitored visitation.

DISCUSSION

1. Appealability and Standard of Review

Once the court adjudicates the dependency petition, its subsequent dispositional order constitutes an appealable judgment. (Welf. & Inst. Code, § 395; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 196.) “In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

2. Jurisdictional Order

a. Mootness

The trial court sustained jurisdictional allegations relating to Albert’s father and A.W.’s father. Mother does not challenge these findings. “[A] jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring her within one of the statutory definitions of a

dependent. [Citations.]” (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16.) Otherwise stated, “a child may be declared a dependent if the actions of *either parent* bring the child within the statutory definitions of dependency.” (*In re P.A.* (2007) 155 Cal.App.4th 1197, 1212, italics added.) Where one basis for jurisdiction is supported by the evidence, the court need not consider the sufficiency of the evidence to support other jurisdictional bases. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; *In re Andy G.* (2010) 183 Cal.App.4th 1405, 1415, fn. 6.) Because Mother does not challenge the sustained allegations in the petition concerning the fathers of the children, “the court’s exercise of jurisdiction over the child is appropriate” and Mother’s claims that jurisdiction is improper are rendered moot. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1431.)

b. Mother Submitted to the Court’s Jurisdiction

At the hearing, Mother voluntarily submitted to the court’s jurisdiction and to its dispositional orders. Given Mother’s express submission to jurisdiction, there is no basis to overturn the court’s exercise of jurisdiction over Mother.

c. Sufficiency of the Evidence

Mother assails the finding that Albert’s sexual molestation of A.W. demonstrates that Mother is unable to protect the children, thereby endangering their physical and emotional health and safety. Jurisdiction is proper if a “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child” (Welf. & Inst. Code, § 300, subd. (b).)

Mother’s family has a long history of sexual abuse. Mother acknowledged that her former husband sexually abused Mother’s developmentally disabled older daughter for years, starting when the child was 10. Apart from this, DCFS received over 20 referrals alleging sexual, physical and emotional abuse of Mother’s children between 1994 and 2006. Mother was aware of the family’s tragic history, and directed that male children not be left alone with females in the house. Mother informed the police that

Albert often worried about turning out like his father, a child molester. Nevertheless, Mother left her then three-year-old daughter with an adolescent brother, and sexual molestation occurred.

It is clear from the record that despite Mother's best intentions, she has been unable to protect her daughters from predatory males. The jurisdictional bases are satisfied if there is a substantial risk a child will suffer serious physical harm as a result of parental failure or inability to adequately supervise or protect the child. Mother has failed to protect her daughters in the past. She provided no assurances that she will be able to protect A.W. in the future. Mother is seemingly unable to detect the warning signs of sexual abuse, which is why it has gone on for years at her home.

3. Dispositional Order

a. Forfeiture

Mother did not object in the trial court to the dispositional order giving custody of Albert to DCFS. "[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. [Citation.] The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. omitted.) While application of the forfeiture rule is not automatic, "the appellate court's discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue," particularly in dependency cases, owing to considerations such as permanency and stability for the child. (*Ibid.*) In *In re S.B.*, the appellate court could exercise its discretion and entertain a mother's challenge, despite her failure to object in the trial court, because the appeal "presented an important issue of law" that "has divided the Courts of Appeal." (*Id.* at pp. 1293-1294.) No similarly important issue of law is presented in the case before us. Accordingly, Mother has forfeited her right to challenge the dispositional order.

b. Albert's Removal Is Warranted by the Evidence

Mother contends that Albert should not have been removed from her custody. However, there was no therapeutic evidence offered at the hearing that Albert poses no

risk of harm to his younger sister. The evidence shows that Albert used cunning to arrange to be alone with A.W., to facilitate his sexual interactions with her. He ran away from home after Mother rejected his false denials of wrongdoing. He has acted badly since the event, running away from his foster placements, being defiant in school, and constantly touching other students. He resents that A.W. is being consoled by family and friends as a result of his abuse. He expressed a desire to live apart from Mother.

In her jurisdiction report interview, Mother agreed that Albert “needs help.” The probation department feels that Albert “poses a risk to the family” and should remain in an outside placement until he and the family receive sexual abuse counseling. In her interview, A.W. indicated that Albert persisted with the molestations over A.W.’s objections: “I told him to stop but he wouldn’t.” Under the circumstances, Albert’s removal from Mother’s home is well warranted until there are assurances that Albert has responded to treatment and no longer poses a threat to A.W.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.